

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY SAMUEL,)	
)	
Plaintiff,)	
)	
)	Civ. No. 05-037-SLR
v.)	
)	
THOMAS CARROLL, (WARDEN), LT.)	
PORTER, COUNSELOR KRAMER, and)	
the I.B.C.C. (CLASSIFICATION)	
COMMITTEE), and DENTAL SERVICE,)	
)	
Defendants.)	

THE IBCC (“CLASSIFICATION COMMITTEE”) ANSWER TO COMPLAINT

The I.B.C.C. (hereinafter, Classification Committee), by and through counsel, hereby answers Plaintiff’s Complaint. This answer asserts affirmative defenses pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e (a) relating to the exhaustion of administrative remedies requirement, as well as defenses of sovereign and qualified immunities.

STATEMENT OF FACTS

Pursuant to Federal Rule of Civil Procedure 8 (b), the Classification Committee generally and categorically denies Plaintiff’s “Statement of Facts.

1. Admitted Plaintiff is an individual convicted and sentenced to a period of incarceration in the custody of the State of Delaware Department of Correction at the Delaware Correctional Center (DCC), Smyrna, Delaware.

2. The identity of the above-captioned State Defendants as Warden, Lt. Porter, Counselor Kramer, and the Classification Committee at the Delaware Correctional

Center at all times relevant hereto is admitted; all other averments contained in the statement of facts characterizing State Defendants as abusing, torturing and mistreating Plaintiff, and failing to provide adequate medical treatment is generally and categorically denied.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 8 (b), the Classification Committee generally and categorically denies Plaintiff's claims that the Classification Committee violated his constitutional rights.

RELIEF SOUGHT

Pursuant to Federal Rule of Civil Procedure 8(b), the Classification Committee generally and categorically denies that Plaintiff is entitled to any relief, and specifically to the relief requested in ¶ V of Plaintiff's complaint.

AFFIRMATIVE DEFENSES

Reading Plaintiff's Complaint liberally as the Supreme Court instructs, e.g., *Haines v. Kerner*, 404 U.S. 519, 520 (1972), he is attempting to state a claim under 42 U.S.C. §1983 that the Classification Committee violated his Eighth Amendment and Fourteenth Amendment rights to be free from cruel and unusual punishment by failing to provide adequate sanitary conditions, by placing him in a particular security classification, and by violating his right to equal protection. Therefore, State Defendants plead the following affirmative defenses.

1. Plaintiff has failed to exhaust available administrative remedies pursuant to 42 U.S.C. §1997e (a); and,

2. Institutional Classification Committee is immune from liability under the Eleventh Amendment to the United States Constitution for money damages; and,

3. Institutional Classification Committee is not a “person” capable of being sued pursuant to 42 U.S.C. §1983, which is the statutory vehicle by which Constitutional claims are brought; and,

4. Institutional Classification Committee, acting in good faith and without negligence within the scope of its employment and without knowingly violating well-established rights is entitled to qualified immunity; and,

5. There is no *Respondeat Superior* liability under 42 U.S.C. §1983 ; and,

6. In the absence of personal involvement, the Classification Committee cannot be held liable for alleged Constitutional violations; and,

7. Negligence is not a cognizable cause of action under 42 U.S.C. § 1983; and,

8. Dismissal is appropriate inasmuch as plaintiff fails to state a claim upon which relief can be granted.

WHEREFORE, the Classification Committee requests this Honorable Court to enter an Order dismissing Plaintiff’s claims against the Classification Committee, and enter findings in favor of State Defendants, and assessing reasonable attorney’s fees and costs for this action.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
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(302) 577-8400
Counsel for Department of Correction

Dated: May 23, 2006

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2006, I electronically filed the Classification Committee's *Answer to the Complaint*, with the Clerk of Court using CM/ECF. I hereby certify that on May 23, 2006, I have mailed by United States Postal Service, the document to the following non-registered participant: Harry Samuel; SBI#; 00201360, Delaware Correctional Center, 1181 Paddock Rd, Smyrna, DE 19977.

/s/ Ophelia M. Waters

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